IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

Bail Appl..No. 4923 of 2007()

SC.282/2001 of ADDL.DISTRICT COURT (ADHOC)-II, MANJERI
CP.17/2002 of J.M.F.C.,TIRUR

.....

: PETITIONER/ACCUSED

C.A.HAMZA, S/O. C.A.MOHAMMED HAJI,
CHEKKUTTY ALI KANAKATH HOUSE, NORTH ANNARA P.O.,
TIRUR TALUK, MALAPPURAM DISTRICT.

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS: COMPLAINANT

STATE OF KERALA, THROUGH THE
CIRCLE INSPECTOR OF POLICE, TIRUR POLICE STATION,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 14/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.4923 of 2007

Dated this the 14th day of August, 2007

ORDER

Application for anticipatory bail. The petitioner is the 5th accused arrayed in the crime initially. Investigation is complete. Final report was filed. The petitioner was not available for trial. The co-accused who faced trial were acquitted as per Annexure-A1 judgment. The case against the petitioner was split up. The petitioner apprehends that he may be arrested in execution of the coercive processes issued by the learned Magistrate.

2. According to the petitioner, he is absolutely innocent. His failure to appear earlier was not wilful. He is willing to surrender before the learned Magistrate and co-operate for the expeditious disposal of the case. But the petitioner apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. In as much as the offence punishable under Section 307 I.P.C is triable exclusively by a Court of Session, the learned Magistrate may abdicate his duty under Section 437 Cr.P.C, submits the learned counsel for the petitioner.

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339]. The learned Magistrate will certainly take into account the fact that in the trial that was held, the co-accused have already been found not guilty and acquitted.

4. This bail application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

rtr/-